



**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION.....	1
II. LEGAL STANDARDS.....	1
III. ARGUMENT .....	2
A. Documents Subject to this Request.....	2
B. Exhibits 1 and 2 Are Incorporated by Reference in the Complaint .....	3
C. The Court Should Take Judicial Notice of Exhibits 3 and 4.....	4
IV. CONCLUSION.....	4

1                           **TABLE OF AUTHORITIES**

	Page(s)
<b>Cases</b>	
<i>Curry v. Yelp Inc.</i> , 875 F.3d 1219 (9th Cir. 2017).....	1
<i>Dinan v. SanDisk LLC</i> , No. 18-cv-5420, 2020 WL 364277 (N.D. Cal. Jan. 22, 2020), <i>aff'd</i> , 844 F. App'x 978 (9th Cir. 2021).....	4
<i>Khoja v. Orexigen Therapeutics, Inc.</i> , 899 F.3d 988 (9th Cir. 2018).....	2, 3
<i>Knievel v. ESPN</i> , 393 F.3d 1068 (9th Cir. 2005).....	1
<i>Marder v. Lopez</i> , 450 F.3d 445 (9th Cir. 2006).....	2
<i>In re Silicon Graphics Inc. Sec. Litig.</i> , 183 F.3d 970 (9th Cir. 1999), <i>as amended</i> (Aug. 4, 1999) .....	2
<i>Skilstaf, Inc. v. CVS Caremark Corp.</i> , 669 F.3d 1005 (9th Cir. 2012).....	2
<i>Swartz v. KPMG LLP</i> , 476 F.3d 756 (9th Cir. 2007).....	2
<i>Tellabs, Inc. v. Makor Issues &amp; Rts., Ltd.</i> , 551 U.S. 308 (2007).....	1
<i>United States v. Ritchie</i> , 342 F.3d 903 (9th Cir. 2003).....	2, 3
<i>Wayne v. Leal</i> , 2009 WL 2406299 (S.D. Cal. Aug. 4, 2009) .....	4
<b>Statutes</b>	
17 U.S.C. § 1202 .....	3, 4
<b>Other Authorities</b>	
Fed. R. Civ. P. 12(b)(6).....	1, 2

1                           **TABLE OF AUTHORITIES**  
2                           (continued)

	Page(s)
3                           Federal Rule of Evidence	
4                           Rule 201 .....	1, 4
5                           Rule 201(b)(2).....	2
5                           Rule 201(c)(2).....	2

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1           **PLEASE TAKE NOTICE** that, on November 16, 2023 at 10:00 a.m., Meta Platforms, Inc.  
 2 (“Meta” or “Defendant”) will and hereby does request that the Court consider the documents  
 3 identified below in support of Meta’s Motion to Dismiss the Complaint (“Complaint”) filed by  
 4 plaintiffs Richard Kadrey, Sarah Silverman, and Christopher Golden (“Plaintiffs”) on July 7, 2023.  
 5 Exhibits 1 through 4 are attached to the Declaration of Judd Lauter (“Lauter Declaration”) in  
 6 Support of Meta’s Motion to Dismiss Plaintiffs’ Complaint, filed concurrently herewith.

7           **I. INTRODUCTION**

8           The Court should consider Exhibits 1 through 4 to the Lauter Declaration in resolving  
 9 Meta’s motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). All of these documents  
 10 are incorporated by reference into the Complaint or are the proper subject of judicial notice under  
 11 Federal Rule of Evidence 201 (“Rule 201”).

12           Plaintiff’s Complaint specifically references and quotes from (but does not attach) Meta’s  
 13 blog post announcing the release of LLaMA and an accompanying research paper which provides  
 14 technical background on the LLaMA models and their training data. Plaintiffs rely on the contents  
 15 of both documents for their claims. As such, these documents are incorporated by reference in the  
 16 Complaint and appropriately considered in their entirety.

17           Separately, Meta asks the Court to take judicial notice of the dictionary definitions of  
 18 “removal” and “omit” from the Merriam-Webster online dictionary (located at [www.merriam-webster.com](http://www.merriam-webster.com)), as the sources and accuracy of these documents cannot reasonably be questioned.

20           **II. LEGAL STANDARDS**

21           In resolving a Rule 12(b)(6) motion to dismiss, “courts must consider the complaint in its  
 22 entirety,” including (1) “documents incorporated ... by reference,” and (2) “matters of which a court  
 23 may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007); *see also Curry v. Yelp Inc.*, 875 F.3d 1219, 1224 (9th Cir. 2017).

25           **Incorporation by Reference:** Under the incorporation by reference doctrine, courts may  
 26 consider documents “whose contents are alleged in a complaint and whose authenticity no party  
 27 questions, but which are not physically attached to the pleading,” without converting a motion to  
 28 dismiss into one for summary judgment. *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)

1 (quoting *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999), as amended  
 2 (Aug. 4, 1999)) (alteration and internal quotation marks omitted). A document is “incorporated by  
 3 reference into a complaint if the plaintiff refers extensively to the document or the document forms  
 4 the basis of the plaintiff’s claim.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *see also Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018) (same). Where a  
 6 document is incorporated by reference, the court “may treat … [it] as part of the complaint, and  
 7 thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).”  
*Ritchie*, 342 F.3d at 908; *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (same).

9 The doctrine “prevents plaintiffs from selecting only portions of documents that support their  
 10 claims, while omitting portions of those very documents that weaken—or doom—their claims.”  
*Khoja*, 899 F.3d at 1002; *see also Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (doctrine  
 12 “prevent[s] plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting documents  
 13 upon which their claims are based”) (alterations and internal quotations omitted).

14 **Judicial Notice:** Rule 201(c)(2) requires a court to “take judicial notice if a party requests  
 15 it and the court is supplied with the necessary information.” Judicial notice is appropriate where a  
 16 fact is not subject to reasonable dispute because it can be accurately and readily determined from  
 17 sources whose accuracy cannot reasonably be questioned. Rule 201(b)(2). Judically noticeable  
 18 matters may be considered along with the complaint when deciding a motion to dismiss for failure  
 19 to state a claim. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 n.9 (9th Cir. 2012).

20 **III. ARGUMENT**

21 **A. Documents Subject to this Request**

22 Meta requests that the Court consider under the incorporation by reference doctrine or take  
 23 judicial notice of the following documents in connection with its Motion to dismiss the Complaint.

Ex.	Description	Cited in Complaint
1	February 24, 2023 Meta blog post announcing release of LLaMA, available at <a href="https://ai.meta.com/blog/large-language-model-llama-meta-ai/">https://ai.meta.com/blog/large-language-model-llama-meta-ai/</a>	¶¶ 31, 32

Ex.	Description	Cited in Complaint
2	LLaMA: Open and Efficient Foundation Language Models (the “Research Paper”)	¶¶ 21, 23
3	Merriam Webster Dictionary Definition of “Remove,” available at <a href="https://www.merriam-webster.com/dictionary/remove">https://www.merriam-webster.com/dictionary/remove</a>	N/A
4	Merriam Webster Dictionary Definition of “Omit,” available at <a href="https://www.merriam-webster.com/dictionary/omit">https://www.merriam-webster.com/dictionary/omit</a>	N/A

10                   **B. Exhibits 1 and 2 Are Incorporated by Reference in the Complaint**

11                  The Court should consider Lauter Exhibits 1 and 2 under the incorporation by reference  
12 doctrine because each document is referenced in the Complaint and forms the basis for Plaintiff’s  
13 claims. *See Khoja*, 899 F.3d at 1002; *Ritchie*, 342 F.3d at 908.

14                  **Exhibit 1:** The Complaint incorporates Lauter Exhibit 1, which is a blog post published by  
15 Meta on February 24, 2023, in which Meta announced the release of the LLaMA models. Plaintiffs  
16 refer to and directly quote from this document in the Complaint. (*See Compl ¶ 31.*) In particular,  
17 Plaintiffs quote Meta’s representations around the conditions of LLaMA’s release. (*Id.*) Plaintiffs  
18 also rely on the post to support their allegation, on information and belief, that Meta “has in fact  
19 distributed the LLaMA models to certain people and entities, [and] continues to do so.” (*Id. ¶ 32.*)  
20 These allegations are central to Plaintiffs’ claims, albeit factually and legally unsupported, that  
21 Meta distributed LLaMA in violation of 17 U.S.C. § 1202 of the Digital Millennium Copyright Act  
22 (“DMCA”). (*See, e.g., ¶¶ 47–53.*)

23                  **Exhibit 2:** The Complaint also references and substantively relies on information contained  
24 in the Research Paper in an attempt to lay foundation for Plaintiffs’ claims, namely, that LLaMA  
25 was trained on Plaintiffs’ books. Specifically, Plaintiffs infer from Meta’s representation in the  
26 Research Paper that LLaMA was trained on “the Books3 section of ThePile” that Plaintiffs’ books  
27 were included in LLaMA’s training dataset. (*Id. at ¶¶ 23–30.*) Such allegations underly all claims

1 in the Complaint, including the federal copyright claims and repackaged (preempted) state law  
 2 claims.

3       **C.     The Court Should Take Judicial Notice of Exhibits 3 and 4**

4       Exhibits 3 and 4 to the Lauter Declaration are dictionary entries from the Merriam-Webster  
 5 online dictionary for, respectively, the words “remove” and “omit.” “Dictionary definitions are []  
 6 a proper subject for judicial notice.” *Threshold Enters.*, 445 F. Supp. 3d at 146; *see Wayne v. Leal*,  
 7 2009 WL 2406299, at \*4 (S.D. Cal. Aug. 4, 2009) (judicial notice appropriate for “sources whose  
 8 accuracy cannot reasonably be questioned, such as ... dictionar[ies]”); *Dinan v. SanDisk LLC*, No.  
 9 18-cv-5420, 2020 WL 364277, at \*5 (N.D. Cal. Jan. 22, 2020), *aff’d*, 844 F. App’x 978 (9th Cir.  
 10 2021) (taking judicial notice of definition at dictionary.com). The definitions of these terms are  
 11 relevant to Plaintiffs’ DMCA claims, several of which turn on whether Meta, in fact, “removed”  
 12 any of Plaintiffs’ alleged copyright management information from the LLaMA software. As these  
 13 definitions are both generally known and readily determined from sources whose accuracy cannot  
 14 reasonably be questioned, they may be accepted upon judicial notice.

15       **IV. CONCLUSION**

16       For the foregoing reasons, Lauter Exhibits 1 and 2 are incorporated by reference in the  
 17 Complaint, and Lauter Exhibits 3 and 4 are the proper subject of judicial notice under Rule 201.  
 18 Meta therefore respectfully requests that the Court consider all of these exhibits in ruling on Meta’s  
 19 motion to dismiss the Complaint.

20       Dated: September 18, 2023

COOLEY LLP

22       By: /s/ Judd D. Lauter

23           Bobby Ghajar  
 24           Angela L. Dunning  
 25           Mark Weinstein  
 26           Judd Lauter  
 27           Colette Ghazarian

28           LEX LUMINA PLLC  
 29           Mark A. Lemley

30       Attorneys for Defendant  
 31       META PLATFORMS, INC